

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

|                                  |   |                            |
|----------------------------------|---|----------------------------|
| In the Matter of                 | ) |                            |
|                                  | ) | File No. EB-08-SE-555      |
| SES Americom, Inc.               | ) | NAL/Acct. No. 200932100049 |
|                                  | ) | FRN 0009827494             |
| Licensee of Satcom C-3 Satellite | ) |                            |

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 27, 2009**

**Released: March 3, 2009**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture*, we find SES Americom, Inc. (“SES”), licensee of the Satcom C-3 geostationary C-band satellite, call sign S2447, apparently liable for a forfeiture in the amount of twelve thousand eight hundred dollars (\$12,800) for operating the Satcom C-3 satellite without Commission authority, in apparent willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”) and Section 25.102 of the Commission’s Rules (“Rules”),<sup>1</sup> and for its willful violation in failing to timely file the required modification application to extend the term of the license pursuant to Section 25.117 of the Rules.<sup>2</sup>

**II. BACKGROUND**

2. On August 25, 1989, SES was granted a license to operate the Satcom C-3 satellite. Under the terms of its license, SES’s authorization for the satellite expired on December 16, 2007.<sup>3</sup> Thereafter, on March 10, 2008, SES became aware that it had failed to file a modification to extend the terms of its license for the Satcom C-3 satellite and that its license had expired. On March 11, 2008, SES filed an application with the International Bureau requesting special temporary authority (“STA”) to operate the Satcom C-3 satellite beyond its license expiration,<sup>4</sup> and followed that request by filing, on March 18, 2008, a modification application which, among other things, would extend the station authorization until December 31, 2010.<sup>5</sup> The modification application was granted by the International Bureau on June 11, 2008.

3. Because it appeared that SES may have operated the Satcom C-3 satellite after the expiration of its license, the International Bureau referred this case to the Enforcement Bureau for investigation and possible enforcement action. On August 4, 2008, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) issued SES a letter of inquiry (“LOI”) to further investigate whether

<sup>1</sup> 47 U.S.C. § 301; 47 C.F.R. § 25.102.

<sup>2</sup> 47 C.F.R. § 25.117.

<sup>3</sup> See File No. SAT-LOA-19880930-00038.

<sup>4</sup> SAT-STA-20080311-00062; application dismissed as moot June 11, 2008.

<sup>5</sup> See Application of SES Americom, Inc., filed March 18, 2008 (File No. SAT-MOD-20080318-00073).

SES operated the Satcom C-3 satellite beyond expiration of its license.<sup>6</sup>

4. In its September 3, 2008 response to the LOI,<sup>7</sup> SES admitted that it did not file the necessary modification to extend the term of its Satcom C-3 satellite license and continued to operate the satellite without Commission authority through March 11, 2008, the date of its STA request, because it was unaware that its license had expired.<sup>8</sup> SES stated that it first became aware that its license had expired on March 10, 2008,<sup>9</sup> at which time it took immediate steps to request an STA to operate the satellite, pending the submission and grant of an application to modify the expiration date contained in the expired authorization.<sup>10</sup> SES states that between the dates of December 16, 2007 and March 18, 2008, it only communicated with the space station for purposes of Telemetry, Tracking, and Command (TT&C), which, it states, are administrative communications for the purpose of preventing the satellite from drifting and thereby creating a risk of interference or other technical harm to nearby spacecraft or the public.<sup>11</sup>

### III. DISCUSSION

5. Section 301 of the Act and Section 25.102(a) of the Rules prohibit the use or operation of any apparatus for the transmission of energy or communications or signals by a satellite station except under and in accordance with a Commission granted authorization.<sup>12</sup> In order for an operator to extend the terms of its space station license, it must file an application for modification under Section 25.117 of the Rules.<sup>13</sup> Absent a timely filed application to extend the authorization, a satellite station license automatically terminates at the end of the license period.<sup>14</sup>

6. Under the terms of its licenses, SES's authorization to operate the Satcom C-3 expired on December 16, 2007. As a Commission licensee, SES is charged with the responsibility of knowing and complying with the terms of its authorizations, the Act and the Rules.<sup>15</sup> SES admitted that it failed to file

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<sup>6</sup> Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Nancy J. Eskenazi, Vice President and Associate General Counsel (August 4, 2008).

<sup>7</sup> Letter from Ms. Nancy J. Eskenazi, Vice President and Associate General Counsel, SES Americom, Inc., to Susan M. Stickley, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 3, 2008).

<sup>8</sup> *Id* at 1.

<sup>9</sup> *Id* at 1-2.

<sup>10</sup> *Id* at 1.

<sup>11</sup> *Id* at 2.

<sup>12</sup> 47 U.S.C. § 301; 47 C.F.R. § 25.102(a).

<sup>13</sup> 47 C.F.R. § 25.117.

<sup>14</sup> 47 C.F.R. § 25.161.

<sup>15</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7437 (2004) ("*Discussion Radio*"). See also *Side By Side, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 898, 901 (Enf. Bur., Spectrum Enf. Div. 2008) ("*Side By Side*"); *La Carpa Corp.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 2744, 2746 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid) ("*La Carpa*"); *Shared Data Networks, LLC*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18184, 18187 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) ("*Shared Data Networks*").

an application to extend the satellite's license prior to its expiration date. Moreover, SES admitted that it continued to operate the Satcom C-3 satellite after the expiration of its license, a situation that SES did not seek to remedy until March 11, 2008, when SES filed its request for STA. Thus, it appears that SES apparently violated Section 301 of the Act and Section 25.102(a) of the Rules by operating the Satcom C-3 satellite without Commission authority, and that SES apparently violated the requirement to file a modification application to extend the license pursuant to Section 25.117 of the Rules.

7. Section 503(b) of the Act<sup>16</sup> and Section 1.80(a) of the Rules<sup>17</sup> provide that any person who willfully or repeatedly fails to comply with the provisions of the Act or the Rules shall be liable for a forfeiture penalty. For purposes of Section 503(b) of the Act, the term "willful" means that the violator knew that it was taking the action in question, irrespective of any intent to violate the Commission's rules, and "repeated" means more than once.<sup>18</sup> Based on the record before us, it appears that SES's violation of Section 301 of the Act and Sections 25.102(a) of the Rules was willful and repeated, and its violation for the failure to timely file the required modification application to extend the license pursuant to Section 25.117 was willful.

8. In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act directs us to consider factors, such as "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>19</sup> Having considered the statutory factors, as explained below, we propose a total forfeiture of \$16,000.

9. Section 1.80(b) of the Rules sets a base forfeiture amount of \$10,000 for operation of a station without Commission authority and \$3,000 for failure to file required forms or information.<sup>20</sup> As the Commission has held, a licensee's continued operations without authorization and its failure to timely file for authority to extend its operations constitute separate violations of the Act and the rules and warrant the assessment of separate forfeitures.<sup>21</sup> Accordingly, we herein propose separate forfeiture amounts for SES's separate violations.

10. Consistent with recent precedent, we propose the full base forfeiture amount of \$3,000 for SES's failure to timely file the required modification application pursuant to Section 25.117 to extend the license for the Satcom C-3 satellite.<sup>22</sup> Additionally, we propose a forfeiture in the amount of \$5,000

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<sup>16</sup> 47 U.S.C. § 503(b).

<sup>17</sup> 47 C.F.R. § 1.80(a).

<sup>18</sup> See 47 U.S.C. § 312(f)(1) & (2). See also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (the definitions of willful and repeated contained in the Act apply to violations for which forfeitures are assessed under Section 503(b) of the Act.)

<sup>19</sup> 47 U.S.C. § 503(b)(2)(E). See also 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures; *Forfeiture Policy Statement*, Report and Order, 12 FCC Rcd 17087, 17110 91997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

<sup>20</sup> 47 C.F.R. § 1.80(b).

<sup>21</sup> See *Discussion Radio*, 19 FCC Rcd at 7438. See also *Side By Side*, 23 FCC Rcd at 898; *La Carpa*, 22 FCC Rcd at 2745; *Lazer Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 8710, 8712 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid) ("*Lazer*"); *Shared Data Networks*, 20 FCC Rcd at 18186.

<sup>22</sup> See e.g., *Bloomsburg University of Pennsylvania*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 9357, 9359 (Media Bur., Audio Div. 2008); *Sunflower Communications, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7657, 7659 (Media

for SES's unauthorized operation of the Satcom C-3 satellite for the three-month period between December 16, 2007, the license's expiration, and March 17, 2008, the date of the STA request.<sup>23</sup> In proposing a forfeiture of \$5,000 for the unauthorized operation, we recognize that the Commission considers a licensee who operates a station with an expired license in better stead than a pirate broadcaster who lacks prior authority, and thus downwardly adjusts the \$10,000 base forfeiture amount accordingly.<sup>24</sup> The aggregate \$8,000 base forfeiture amount is subject to adjustment, however. In this regard, we consider SES's size and ability to pay a forfeiture.<sup>25</sup> To ensure that forfeiture liability is a deterrent, and not simply a cost of doing business, the Commission has determined that large or highly profitable companies, such as SES, could expect the assessment of higher forfeitures for violations.<sup>26</sup> Given SES's size and ability to pay a forfeiture, we conclude that a significant upward adjustment of the aggregate base forfeiture amount to \$16,000 is appropriate.<sup>27</sup> Thus, we propose an aggregate forfeiture of \$16,000.

11. We further find, however, that a downward adjustment of the proposed forfeiture from \$16,000 to \$12,800 is warranted because SES made voluntary disclosures to Commission staff and undertook corrective measures after learning of its violations prior to any Commission inquiry or initiation of enforcement action.<sup>28</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act<sup>29</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>30</sup> SES Americom, Inc. **IS** hereby **NOTIFIED** of its

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Bur., Audio Div. 2008); *Santa Cruz Educational Broadcasting Foundation*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC 21033, 21035 (Media Bur., Audio Div. 2007) (all proposing the full base forfeiture amount of \$3,000 against broadcast station licensees for failure to file timely renewal applications).

<sup>23</sup> Section 503(b)(6) of the Act, 47 U.S.C. § 503(b)(6), prohibits assessment of a forfeiture for a violation that occurred more than one year before the issuance of a NAL, but this section does not bar consideration of prior conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period. See *Globcom, Inc., d/b/a Globcom Global Communications*, Notice of Apparent Liability for Forfeiture and Order, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-72 (2000).

<sup>24</sup> See *Discussion Radio*, 19 FCC Rcd at 7438 (proposing a \$5,000 forfeiture against a broadcaster for operating its broadcast station beyond the expiration of its license); *Side by Side*, 23 FCC Rcd at 900 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *La Carpa*, 22 FCC Rcd at 2746 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license); *Lazer*, 21 FCC Rcd at 8712 (proposing a \$5,000 forfeiture against an earth station operator for operating beyond the expiration of its license).

<sup>25</sup> SES recently reported that its recurring revenue rose six percent in 2008 to \$2.1 billion. See *International Telecom*, Communications Daily, February 17, 2009, at 8.

<sup>26</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-100.

<sup>27</sup> See *Walgreen Co.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 16,045, 16,048 (Enf. Bur., Spectrum Enf. Div. 2007) (forfeiture paid).

<sup>28</sup> See *Petracom of Texarkana, LLC*, Forfeiture Order, 19 FCC Rcd 8096, 8097-8098 (Enf. Bur. 2004). See also *Side By Side*, 23 FCC Rcd at 901; *Lazer*, 21 FCC Rcd at 8712; *Journal Broadcasting Corp.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 18211, 18214 (Enf. Bur., Spectrum Enf. Div. 2005) (forfeiture paid).

<sup>29</sup> 47 U.S.C. § 503(b).

<sup>30</sup> 47 C.F.R. §§ 0.111, 0.311 and 1.80.

**APPARENT LIABILITY FOR A FORFEITURE** in the amount of twelve thousand eight hundred dollars (\$12,800) for the willful and repeated violation of Section 301 of the Act and Section 25.102(a) of the Rules and for the willful violation of the requirement to timely file a modification application to extend the terms of its license pursuant to Section 25.117 of the Rules.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,<sup>31</sup> within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, SES Americom, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer – Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. SES will also send electronic notification on the date said payment is made to Ricardo.Durham@fcc.gov and Susan.Stickley@fcc.gov.

15. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Ms. Nancy J.

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<sup>31</sup> 47 C.F.R. § 1.80.

Eskenazi, Vice President and Associate General Counsel, SES Americom, Inc., Four Research Way, Princeton, New Jersey 08540, and a copy to its counsel, Karis A. Hastings, Esq., Hogan & Hartson L.L.P., Washington, D.C. 2004-1109.

**FEDERAL COMMUNICATIONS COMMISSION**

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau